



September 26, 2011

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: RIN No. 3038-AD00 -- Comments Regarding Swap Clearing Determinants

Dear Secretary Stawick:

The Business Council for Sustainable Energy supports clarification in the Commodity Futures Trading Commission ("CFTC" or "Commission") Regulations implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2011 (P.L. 111- 203) related to the process for review of swaps for mandatory clearing.

The Business Council for Sustainable Energy (BCSE) is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, public power, commercial end-users and carbon offset project developers and greenhouse gas emissions management firms. The coalition's diverse business membership is united around the revitalization of our economy and creation of a secure and sustainable energy future for America.

Recognizing that the CFTC Rule has now been finalized, in a letter dated July 28, 2011 Commissioner O'Malia requested public comment on the manner in which the Commission should determine which swaps to subject to the mandatory clearing requirement.

Regulatory certainty regarding the treatment of illiquid swaps is crucial and necessary for continued business investment and we encourage the Commission to establish guidelines regarding the manner in which the Commission will determine which swaps to subject to the mandatory clearing requirement.

To make certain long-term investment decisions, market participants need confidence in the availability and cost of risk management tools. Where swaps are illiquid by virtue of their long terms, they should not be subjected to mandatory clearing because doing so would create a disincentive for long-term investment in the economy. While the statute is clear that trading liquidity is a factor that the Commission must consider in determining swaps subject to mandatory clearing, regulatory uncertainty regarding the manner in which liquidity will be considered in this process persists and must be resolved.

Furthermore, the product definitions for renewable energy credits (RECs) and environmental commodities have not yet been decided. The Council believes that these environmental commodities – which are illiquid and unique products - should be defined as physical commodities and not as financials.

The Council encourages the Commission to issue guidelines to eliminate regulatory uncertainty. We look forward to working with you as the implementation process moves forward and would like to request a meeting to discuss our views further.

Sincerely,

Lisa Jacobson, President
Business Council for Sustainable Energy